

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

GENAURIS JOSE ARIAS LARA	)	
	)	
Petitioner,	)	<b>Case No: 1:25-CV-229-LM-AJ</b>
	)	
v.	)	
	)	
WARDEN, FCI-BERLIN, ET AL.,	)	
	)	
Respondents.)	)	

**PETITIONER’S SURREPLY TO RESPONDENTS’ MOTION TO DISMISS**

The Government states that the voluntary cessation doctrine does not apply to this Petition because the Petitioner “has demonstrated no similar pattern of systemic violations.” *See* Resp’ts’ Reply, Doc. 7, p. 5.<sup>1</sup> The truth is that there *is* a systemic pattern, triggered by the administration’s denouncement of all prior grants of parole, where law enforcement officers of every rank have been told to arrest paroled noncitizens and hand them over to Immigration and Customs Enforcement (ICE). The result of this policy is that Mr. Arias will almost certainly be redetained the next time he encounters law enforcement, and he needs an order from this Court to prevent this from happening.

On Inauguration Day, the new administration issued Executive Order 14165 entitled “Securing Our Borders.” 90 FR 8467 (published Jan. 30, 2025), attached as **Exhibit 1**. That Order declared that in the last four years, the United States “has endured a large-scale invasion” of so-called “illegal aliens,” and it instructed all tiers of the executive to reform the use of parole to

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<sup>1</sup> The Government attempts to improperly shift its evidentiary burden to Petitioner, who is under no obligation to provide such evidence to withstand Respondents’ Motion to Dismiss, but even so the Petitioner can.

conform to the administration's current agenda. *Id.* at Sec. 1, Sec. 7. That same day, then-acting Secretary of Homeland Security Huffman issued a directive which specifically targeted what the Department called "the broad abuse of humanitarian parole" and instructed the agency to "phase out any parole programs that are not in accordance with the law." *See* "Statement from a DHS Spokesperson," Dept. of Homeland Security (DHS) press release Jan. 21, 2025, attached as **Exhibit 2**. In response, DHS terminated several parole programs from the prior administration on the theory that they were never lawful to begin with.<sup>2</sup> But in addition to those widely publicized actions, it has since become clear that the administration's Order has engendered a second, shadow policy, and that is that all parolees from the prior administration are to be arrested whenever encountered and transferred to the custody of ICE.

This is what happened to the petitioner in *Flores Salazar v. Moniz*, which Respondents criticize Mr. Arias for saying so little about.<sup>3</sup> In that case, petitioner Flores Salazar, an asylum-seeker paroled the previous summer, was traveling to a job site in Maine when his work crew was

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<sup>2</sup> This has so far included termination of the paroles of hundreds of thousands of CBP One program entrants and termination of parole for approximately 500,000 people from Cuba, Haiti, Nicaragua, and Venezuela (known as "CHNV parole"). *See* Rebecca Beitsch, "Legal status revoked for 985,000 migrants who entered US under Biden-era CBP One app," THE HILL (Apr. 8, 2025); Ali Bianco, "DHS revokes parole for hundreds of thousands who entered via the CBP One app," POLITICO (Apr. 8, 2025); "DHS Launches CBP Home App," DHS press release Mar. 10, 2025; "DHS Releases Statement on Major SCOTUS Victory," DHS press release May 30, 2025, available at <https://www.dhs.gov/news-releases/press-releases>, attached collectively as **Exhibit 3**.

<sup>3</sup> By recent media reports, Mr. Flores Salazar is by no means the only one. *See* Ari Snider, "Lawyers say Border Patrol in Maine is arresting people who are in lawful immigration processes," NEW HAMPSHIRE PUBLIC RADIO (May 8, 2025), available at <https://www.nhpr.org/2025-05-08/lawyers-say-border-patrol-in-maine-is-arresting-people-who-are-in-lawful-immigration-processes>; Marie Weidmayer, "Border Patrol is 'unlawfully' detaining asylum seeker in Maine, petition says," BANGOR DAILY NEWS (Mar. 25, 2025), available at <https://wgme.com/news/local/border-patrol-is-unlawfully-detaining-asylum-seeker-in-maine-petition-says-us-customs-and-border-patrol-immigration-ice-migrant-workers>, attached as **Exhibit 4**. Petitioner requests that the Court take judicial notice of Exhibits 2, 3, and 4 pursuant to F. R. Evid. 201.

stopped by Customs and Border Patrol (CBP) agents. *See Flores Salazar v. Moniz*, Doc. 26, 2025 WL 1703516, slip op. at \*2 (D. Mass. Jun. 11, 2025). When he and three of his crew members presented evidence of their paroles, but no other “lawful” status, they were arrested. Flores Salazar was transferred to ICE custody the next day, and he remained detained for sixty-five days until his own habeas litigation prompted ICE to release him. *Id.* at \*1–3. Agents from CBP and ICE said that his detention was merely the result of an “administrative oversight,” and the district court convened a hearing to suss out what that oversight could have been. *Id.* at \*3–4.

CBP Patrol Agent in Charge James Trainor tried to explain. He testified that their guidance from Washington – nowhere in writing but communicated down the chain through meetings and teleconferences – was to reevaluate the parole of every person they encountered. *See Tr. of Hearing* (June 9, 2025), Doc. 30, *Flores Salazar v. Moniz*, C.A. No. 1:25-cv-11159-LTS (D. Mass.), at 54:24-25; 55:1-25; 56:1-25; 57:1-4, attached as **Exhibit 5**. Where it all went wrong, he said, was that the arresting line agents should have revoked Mr. Flores Salazar’s parole when they arrested him and they simply forgot to do so. *Id.* at 33:5-24. The court tested the witness on this point, pressing that surely they couldn’t revoke parole without actually conducting a substantive redetermination, and the witness said, “Well, yes,” before admitting that no one from his agency bothered to do it. *Id.* at 37:5-15; 38:1-25; 39:1-2. Two days later, the court issued a written decision granting Mr. Flores Salazar’s petition. The court held in unequivocal terms that the Government had acted unlawfully, with full knowledge and full disregard of Mr. Flores Salazar’s parole status, and it found the Government’s claims of having acted in error to be incredible. *See Flores Salazar*, Doc. 26, 2025 WL 1703516, at \*6–8; \*6, n. 5; \*7, n. 6.

No less has happened in Mr. Arias’ case, and the unwritten policy which animated Mr. Flores Salazar’s arrest is fully consistent with the facts of this Petition – facts which the

Government has seen no reason to controvert. Mr. Arias, an asylum-seeker, was paroled into the United States last summer. *See* Pet'r's Mem. of Opp'n, Doc. 6-1. Mr. Arias was then arrested, inexplicably, by agents from the Drug Enforcement Administration during an unprompted traffic stop and was immediately transferred to ICE custody. *See id.* At no point has the Government suggested there was any reason for this detention other than the mere fact of Mr. Arias' parole and his chance encounter with law enforcement. *See id.* In the face of the Government's silence, the only reasonable conclusion is that this shadow parole policy is the rule of the day, that it is in force still, and that it has evidently been communicated not only to the country's immigration officers but to all walks of law enforcement: if you encounter a person who was paroled under the prior administration, you are to arrest them and hand them over to ICE.

Respondents seek to dismiss Mr. Arias' fears as unsupported speculation, but they don't say what they ought to: that Mr. Arias will not be redetained should he again cross paths with law enforcement. This is why the voluntary cessation exception must apply, why it matters that the Court retain jurisdiction of Mr. Arias' Petition, and why it is that the Court can still provide Mr. Arias relief. Mr. Arias was detained not because he did anything wrong but because he was a parolee from a prior era. Mr. Arias was released not because ICE was alerted to its error but because the Court was threatening closer scrutiny. Mr. Arias was unlawfully detained for more than three months and he requests that the Court rule on his Petition to protect him against recurrent violations under the existing Executive Order and law enforcement's evident interpretations of that policy.

Mr. Arias therefore respectfully requests that the Court issue an order that the Government cannot revoke his parole and redetain him *unless and until* it makes an individualized determination, in conformance with the applicable regulations, that his circumstances have

materially changed and that his parole is no longer warranted as a result of that change. Without that ruling, Mr. Arias is as much at risk of unlawful detention now as he has been since January.

Respectfully submitted,

GENAURIS ARIAS LARA,

By his attorneys,

Dated: July 21, 2025

/s/ Lindsay Kramer Custer

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Dated: July 21, 2025

/s/ Kara Thorvaldsen

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#### CERTIFICATE OF SERVICE

I, Lindsay Kramer Custer, hereby certify that on this date I served the foregoing Surreply by filing the same with the Court's ECF electronic filing system and by so doing served the Surreply on all registered participants to this action, including counsel for Respondents.

Dated: July 21, 2025

/s/ Lindsay Kramer Custer

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